

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

In re: Eleazar Salazar,

Debtor,

ELEAZAR SALAZAR,

Plaintiff,

v.

U.S. BANK NATIONAL
ASSOCIATION, as Trustee for the C-
BASS Mortgage Loan Asset-Backed
Certificates, Series 2006-CB2, its
successor and/or successors; LITTON
LOAN SERVICING, LP; QUALITY
LOAN SERVICE CORPORATION;
ACCREDITED HOME LOANS, INC.,

Defendants.

Civil No. 11cv2792 L(BLM)

Bankruptcy Case No.: 10-17456-MM13
Adversary No.: 11-90441-MM

**ORDER GRANTING MOTION TO
WITHDRAW THE REFERENCE
[doc. #1]**

Plaintiff/debtor Eleazar Salazar's Chapter 13 bankruptcy action was filed on September 30, 2010. In September 2011, plaintiff filed an adversary complaint asserting state law claims challenging the foreclosure of real property against defendants U.S. Bank National Association, as Trustee for the C-BASS Mortgage Loan Asset-Backed Certificates, Series 2006-CB2; Litton Loan Servicing, L.P. Defendants filed an answer to the adversary complaint on November 14, 2011. They now move to withdraw the reference from the Bankruptcy Court to the District

1 Court. The motion has been fully briefed. For the reasons set forth below, the motion will be
2 granted.

3 Discussion

4 District courts have discretion to refer “any or all cases under title 11 and any or all
5 proceedings arising under title 11 or arising in or related to a case under title 11” to the
6 bankruptcy judges for that district. 28 U.S.C. § 157(a). “[B]ankruptcy courts may hear and enter
7 final judgments in ‘core proceedings’ in a bankruptcy case.” *Stern v. Marshall*, 131 S. Ct. 2594,
8 2601–02 (2011). In “non-core proceedings, the bankruptcy courts instead submit proposed
9 findings of fact and conclusions of law to the district court, for that court’s review and issuance
10 of final judgment.” *Id.*

11 This court “may withdraw in whole or in part, any case proceeding referred, on its own
12 motion or on timely motion of any party, for cause shown.” 28 U.S.C. § 157(d). In the present
13 case, defendants move to withdraw the reference of the adversary complaint because the claims
14 debtor asserts are not core bankruptcy matters but instead are based on alleged violations of
15 California law. “Core proceedings are actions by or against the debtor that arise under the
16 Bankruptcy Code in the strong sense that the Code itself is the source of the claimant’s right or
17 remedy, rather than just the procedural vehicle for the assertion of a right covered by some other
18 body of law, normally state law.” *Matter of U.S. Brass Corp.*, 110 F.3d 1261, 1268, 30 Bankr.
19 Ct. Dec. (CRR) 778 (7th Cir. 1997). The party seeking withdrawal of the reference bears the
20 burden of showing that the reference should be withdrawn. *Carmel v. Galam (In re Larry’s*
21 *Apartment, LLC)*, 210 B.R. 469, 472 (Bankr. D. Ariz. 1997).

22 Defendants argue that debtor’s claims challenge the nonjudicial foreclosure procedures of
23 a mortgage loan and do not draw from or rely on bankruptcy law and therefore, are non-core
24 proceedings that should be heard in this Court. In other words, like the *Stern* case, the state law
25 claims at issue in this action are “in no way derived from or dependent upon bankruptcy law.”
26 131 S. Ct. at 2618.

27 Debtor contends, however, that plaintiff’s adversary complaint is a core proceeding
28 because the claims concern the administration of the estate; would determine, avoid or recover

1 fraudulent conveyances; or affect the liquidation of the assets of the estate or the adjustment of
2 the debtor-creditor relationship. Opp. at 2 (citing 11 U.S.C. §157(b)(2)(A), (H), and (O)). The
3 Court disagrees. Debtor adversary complaint is a state law wrongful foreclosure action which
4 clearly could have been filed in state court and would not be “resolved in the process of ruling
5 on a creditor's proof of claim.” *Stern*, at 2621. As a result, the bankruptcy court cannot enter a
6 final judgment on debtor’s adversary action. Nevertheless, the Court must determine whether it
7 is required to withdraw the reference, or, if not required, it should exercise its discretion to do so.

8 The bankruptcy code specifically provides that a bankruptcy court may hear and “submit
9 proposed findings of fact and conclusions of law to the district court,” subject to de novo review,
10 in a proceeding “that is not a core proceeding.” 28 U.S.C. § 157(c)(1). Thus, the Court may
11 decline to withdraw the reference and require the bankruptcy court to provide proposed findings
12 of fact and conclusions of law.

13 The Ninth Circuit has set forth factors to consider in determining whether to exercise its
14 discretion and withdraw the reference: (1) efficient use of judicial resources; (2) delay and costs
15 to the parties; (3) uniformity of bankruptcy administration; (4) the prevention of forum shopping;
16 and (5) other related factors. *Sec. Farms v. Int’l. Bhd. of Teamsters (In re Security Farms)*, 124
17 F.3d 999, 1008 (9th Cir. 1997).

18 Here, the most efficient use of judicial resources supports withdrawal of the reference.
19 The Court is able to consider the factual and legal basis for the adversary action, which is based
20 on determination of state law claims, without unreasonable delay or costs. Because this type of
21 action has been considered frequently in the district court, the results of the adversary litigation
22 would likely be consistent with similar cases. This is not a case where there are complex issues
23 of law that require consideration of the interplay between bankruptcy and state law claims.

24 As noted above, because debtor’s claims are non-core, the bankruptcy court may not enter
25 final judgment. For the reasons set forth above, withdrawal of the reference is reasonable.

26 Debtor finally argues that the motion for withdrawal of the reference is untimely: such a
27 motion is “timely if it was made as promptly as possible in light of the developments in the
28 bankruptcy proceeding.” *Sec. Farms*, 124 F.3d at 1007 n.3.

1 The Court finds no basis to suggest that the motion for withdrawal of the reference was
2 not promptly made.


3 Based on the foregoing, **IT IS ORDERED:**

4 1. Defendants' motion for withdrawal of the reference is **GRANTED;**

5 2. Defendants shall answer or otherwise respond to plaintiff's complaint on or before
6 February 17, 2012.

7 **IT IS SO ORDERED.**

8 DATED: January 30, 2012

9 
10 M. James Lorenz
United States District Court Judge

11 COPY TO:

12 HON. BERNARD G. SKOMAL
13 UNITED STATES MAGISTRATE JUDGE

14 ALL PARTIES/COUNSEL
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